

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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Amendment of Parts 1, 21, 73, 74 and )  
101 of the Commission's Rules to )  
Facilitate the Provision of Fixed and )  
Mobile Broadband Access, Educational )  
and Other Advanced Services in the )  
2150-2162 and 2500-2650 MHz Bands )  
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WT Docket No. 03-66  
RM-10586

**JOINT REPLY COMMENTS OF  
STANFORD UNIVERSITY, NORTHEASTERN UNIVERSITY  
And THE DIOCESE OF BROOKLYN**

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Pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. § 1.415), The Board of Trustees of the Leland Stanford Junior University ("Stanford"), Northeastern University ("Northeastern"), and The Diocese of Brooklyn ("Brooklyn") submit the following response to the comments on the Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket.<sup>1</sup> Stanford, Northeastern and Brooklyn filed comments on September 8, 2003, on aspects of the changes proposed in the NPRM for the rules governing the Multipoint Distribution Service ("MMDS" or "MDS") and Instructional Television Fixed Service ("ITFS").

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<sup>1</sup> *Notice of Proposed Rulemaking*, FCC 03-56 (released Apr. 2, 2003), published at 68 Fed. Reg. 34560 (June 10, 2003).

## SUMMARY

Stanford, Northeastern and Brooklyn urge the Commission to maintain the availability of ITFS spectrum for high-power, point-to-multipoint services. High-power transmissions are an efficient and effective means of distributing instructional services, and cannot yet be replaced with other methods of delivery. Forcing educators only to use low-power transmissions for delivery of instructional programming would disrupt existing educational programs and restrict the flexibility that ITFS licensees currently enjoy.

The Commission must also ensure that grandfathered E-/F-Channel ITFS licensees do not lose spectrum rights during the transition to a new regulatory regime and will be permitted to participate in any new regime on an equal footing with other ITFS stations. Accordingly, the Commission must adopt rules for the new regulatory regime that maintain the existing spectrum rights of grandfathered ITFS stations. Such rights include interference protection for protected service areas and spectrum priority in those geographic areas where a co-channel MMDS station would not have been able to build a station because of impermissible interference to the grandfathered ITFS station's facilities.

### **I. SUFFICIENT SPECTRUM MUST BE MAINTAINED FOR HIGH-POWER INSTRUCTIONAL SERVICES.**

Some parties have suggested that the public interest would be served by eliminating all high-power operations, including ITFS point-to-multipoint

transmissions in the 2500-2690 MHz band.<sup>2</sup> For example, the Grand MMDS Alliance New York F/P Partnership claimed that “the Commission should be able to transition all licensees to a low-power environment without in any way compromising the Commission’s commitment to protecting the continued provision of instructional programming.”<sup>3</sup> These parties are flatly wrong in their assessment. Stanford, Northeastern, and Brooklyn require access to spectrum for high-power uses, and oppose the elimination of high-power operations for ITFS services.

First, as the record in this docket reflects, and as the Commission originally determined for ITFS, the use of centralized point-to-multipoint operations is an efficient and relatively inexpensive method to deliver instructional programming over a wide service area.<sup>4</sup> Stanford, Northeastern and Brooklyn combined use point-to-multipoint operations to deliver instructional and other educational programming to tens of thousands of students and other viewers *daily*. It may be technically possible to serve more consumers with cellularized, mass market mobile services in the same spectrum, but there is already substantial spectrum allocated for such mobile services. The 2500-2690 MHz band is the only spectrum band with an allocation for *instructional* services. Eliminating the option of using the ITFS

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<sup>2</sup> See Comments of Fixed Wireless Holdings LLC, at 6-7; Comments of Grand MMDS Alliance New York F/P Partnership, at 6-7; Comments of Spectrum Market, LLC, at 11-13.

<sup>3</sup> Comments of Grand Alliance, at 7.

<sup>4</sup> See, e.g., NPRM, ¶ 38; Comments of Catholic Television Network and National ITFS Association, at 3-8; Comments of the Educational Community, at 4-6; Comments of Illinois Institute of Technology, at 4-9.

band for high-power services would require ITFS stations to find new methods of delivery for their programming and to incur new build-out costs and/or charges from facilities-based carriers.

Moreover, even if the “market value” of the spectrum were greater if dedicated to cellular/PCS-type uses,<sup>5</sup> that alone would not justify abandonment of high-power, instructional services. A market value calculation cannot adequately account for the usage value of the spectrum to individual educational institutions and their students or the cost to the institution of a replacement mode of delivery for the ITFS coursework if the spectrum is unavailable. Therefore, it should not be used as the standard to decide to eliminate high-power services in the ITFS/MDS spectrum band.

Second, the record in this docket reflects that use of the Internet for instructional purposes, as proposed by the opponents of high-power uses, is not an equivalent or adequate means for delivery of ITFS programming. Over-the-air video remains the most reliable and efficient form of delivery at this time.<sup>6</sup> There is no factual basis for the contention that ITFS “programming can be provided far more efficiently using alternative technologies and without using dedicated spectrum.”<sup>7</sup>

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<sup>5</sup> Comments of Spectrum Market LLC, at 11-13.

<sup>6</sup> See Comments of Stanford and Northeastern, at 8-9; Comments of Illinois Institute of Technology, at 12-15.

<sup>7</sup> Comments of Grand Alliance, at 6.

Third, the suggestion that the Commission must reallocate all available spectrum dedicated to instructional use to permit provision of broadband services is contrary to the public interest. Spectrum utilization in the United States, and throughout the world, has always been marked by diversity in both service providers and services. Indeed, the Commission's spectrum management policies are designed to promote such diversity, and nothing in the NPRM suggested abandonment of this policy.<sup>8</sup> Nor does the advent of broadband services dictate that the Commission should pursue a different approach to spectrum utilization. Suggesting that instructional services should be eliminated in favor commercial mobile services reflects an attempt to capitalize on spectrum holdings in a manner never contemplated in the NPRM or the White Paper. The Commission should reject these suggestions as flatly inconsistent with sound spectrum management policies and the Commission's multiple and long-standing public interest findings that support retention of an allocation of spectrum for instructional uses.

## **II. GRANDFATHERED ITFS STATIONS MUST PARTICIPATE IN THE NEW REGULATORY REGIME ON AN EQUAL FOOTING WITH OTHER ITFS STATIONS AND WITHOUT LOSS OF EXISTING SPECTRUM RIGHTS.**

Grand MMDS Alliance New York F/P Partnership has proposed a transition plan that would expand the spectrum rights of E-/F-Channel MMDS licensees and

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<sup>8</sup> If the Commission eliminates high-power ITFS services, then it will severely restrict the ability of ITFS licensees to decide the best use of the available spectrum. *See Spectrum Policy Task Force, Report*, ET Docket No. 02-135, at 16 (Nov. 2002) ("Flexibility [in spectrum use] enables spectrum users to make fundamental choices about how they will use spectrum").

revoke the existing spectrum rights of grandfathered E-/F-Channel ITFS stations. But, Grand Alliance has provided no policy justifications for any aspect of its plan, and indeed, its plan is inconsistent with long-standing Commission law and policy. Stanford, Northeastern and Brooklyn object to these proposals. If adopted, these proposals would harm the public interest by curtailing, for example, the full programming schedules that Stanford and Brooklyn transmit over grandfathered ITFS stations.

Grand Alliance suggests that the Commission should use a two-sided auction to redistribute spectrum in the 2500-2690 MHz band.<sup>9</sup> As part of this plan, Grand Alliance suggests that an ITFS licensee should receive no benefit from such an auction for a station used to relay programming to receive sites from another ITFS station within the same “market.”<sup>10</sup> Such action would constitute an unlawful revocation of license without any justification contrary to Section 312 of the Communications Act of 1934 (47 U.S.C. § 312). Grandfathered ITFS stations were licensed on a site-by-site basis to provide specific instructional purposes and public

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<sup>9</sup> Stanford, Northeastern and Brooklyn generally agree with the many commenters who objected to use of a two-sided auction to transition to a new ITFS/MMDS regulatory regime. *See, e.g., Comments of Educational Community*, at 6-8.

<sup>10</sup> A few paragraphs earlier, Grand Alliance proposes that if an E-/F-Channel MDS licensee is willing to provide equivalent facilities, a grandfathered ITFS station should be required to relocate to other frequencies. *Comments of Grand Alliance*, at 8. Grand Alliance thus concedes that grandfathered ITFS stations have *some* value to their licensees and the public, but wants the Commission to erase that value by rule to benefit Grand Alliance.



interest benefits. To the extent that they are serving their specified receive sites as licensed, there is no basis for the Commission simply to revoke the license and eliminate the service, particularly for the sole purpose of improving the value of a co-channel commercial MMDS station.<sup>11</sup>

The Commission made exactly this point in the NPRM (§ 2), noting that “we do not intend to evict any incumbent licensees from the affected band if they have been in compliance with our rules and continue to comply with our rules when we modify or augment them nor do we intend to undermine the educational mission of ITFS licensees.” The Grand Alliance’s suggestion is obviously in direct conflict with the Commission’s stated intentions.

Partial revocation does just as much violence to an ITFS station’s spectrum rights as complete revocation. Grand Alliance suggests that E-/F-Channel MMDS licensees should be permitted to transition co-channel ITFS stations onto one high-power channel, and presumably terminate their other spectrum rights.<sup>12</sup> Even if one digital channel could handle current traffic, decreasing a licensee’s spectrum rights by 75% decreases by 75% its capacity to grow its programming services

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<sup>11</sup> Even the Grand Alliance is inconsistent on its own suggestions. It claims that the use of ITFS channels as a relay in Grand Alliance’s New York City market should be stopped, while a station’s use of ITFS channels in a rural market as a relay is “legitimate” for the purpose of “extend[ing] the reach of its signal, beyond its main market, into low density areas.” Comments of Grand Alliance, at 8 n.17. The inconsistencies and limitations in Grand Alliance’s proposal simply confirm that its suggestions are designed solely for self-aggrandizement rather than any public interest benefit.

<sup>12</sup> Comments of Grand Alliance, at 8.

generally, and by transition to digital specifically. In the example repeatedly cited by Grand Alliance, an ITFS licensee that transitioned a four-channel analog main facility to a 16-channel digitized facility would not be able to “relay” its new programming capacity to extend its service area over a one-channel digitized relay station. Grandfathered ITFS stations should have the same rights as other ITFS stations to evolve their facilities when the Commission changes the rules governing *all* ITFS/MDS stations.<sup>13</sup>

Grand Alliance also suggests that the facilities of all remaining grandfathered ITFS stations should continue to be frozen in place and accorded interference protection only at their existing receive sites.<sup>14</sup> This suggestion also makes no sense under the current rules governing ITFS and is contrary to the instructional goals of ITFS. The Commission has already awarded “all ITFS licensees” a protected service area.<sup>15</sup> Therefore, restricting interference protection to receive sites would take existing spectrum rights away from grandfathered ITFS stations, which was never the intent of this proceeding.

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<sup>13</sup> *Cf. Amendment of Parts 2, 21, 74 and 94 of the Commission’s Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, 98 FCC 2d 129, 133 n.8 (1985) (“natural evolution” of grandfathered ITFS stations is grounds for allowing change to facilities).

<sup>14</sup> Comments of Grand Alliance, at 9.

<sup>15</sup> *See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112, 19173, ¶ 114 (1998), recon., 14 FCC Rcd 12764, 12773, ¶ 20 (1999).

Moreover, the Commission is proposing to adopt wholesale revisions to the ITFS band plan and regulatory regime. There is no fair or logical way to accomplish that task while requiring grandfathered ITFS stations to maintain their facilities as is. Indeed, to require one or two stations in a market not to change at all while others change would make the transition even more difficult.

For example, if the Commission grants ITFS and MDS operators a geographic service area based on their current protected service areas, it can and should allow grandfathered ITFS operators the freedom to build facilities within that geographic service area in accordance with the new rules. Licensees such as Grand Alliance will neither gain nor lose from such a policy because they would not have been able to operate in the grandfathered ITFS station's PSA in any event.

Ultimately, Grand Alliance's proposals ask the Commission to change the rules it adopted in 1983 regarding the relationship between grandfathered ITFS stations and new MMDS stations on the E- and F-Channels. It is simply 20 years too late to reconsider the rules adopted at that time, but it is not too late to treat grandfathered ITFS stations equitably. In order to treat all licensees equitably under the new rules, the Commission must adopt rules for the new regulatory regime that maintain the existing spectrum rights of grandfathered ITFS stations, including interference protection in those geographic areas where the co-channel MMDS station would not have been able to build facilities because of impermissible interference to the grandfathered ITFS station's facilities.

This result does not harm Grand Alliance or other MMDS licensees similarly situated. Grand Alliance applied and was licensed for the F-Channel Group in New York City with full knowledge that there was an operational grandfathered ITFS station in the area. Grand Alliance accepted its license with the condition that it would have to provide interference protection to the operations of the existing F-Channel ITFS station for as long as that station continued to operate.

Grand Alliance's failure to initiate commercial operations for about 15 years is entirely a problem arising from the conditions placed on its license and its refusal to build in accordance with those conditions. The ITFS licensee was under no obligation to relocate, or not to lease excess capacity airtime, or to voluntarily cede any of its licensed rights to operate an F-Channel ITFS station to make it easier or more commercially viable for Grand Alliance to operate. Indeed, Grand Alliance itself acknowledges that "[d]espite billions of dollars of investment, the existing high-power services have failed to establish any clear commercial value. The non-commercial value for transmission of instructional programming remains . . . ."<sup>16</sup> So, according to Grand Alliance, its commercial problems are endemic to the industry, not the fault of a co-channel ITFS station whose programming, by the way, is of value. Grand Alliance's proposals regarding elimination of high-power operations and grandfathered ITFS stations in the 2500-2690 MHz band are just another effort to gain spectrum rights that were never included in its license. They

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<sup>16</sup> Comments of Grand Alliance, at 6.

should be rejected as contrary to the goals of this proceeding and inconsistent with the long-recognized value of ITFS to the educational community and the U.S. public.

### III. CONCLUSION

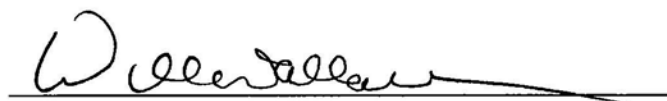
The Commission should continue to adhere to its longstanding support for the instructional goals of ITFS stations and should adopt rules for the new regulatory regime for ITFS consistent with the principles set forth above and in Stanford's, Northeastern's and the Brooklyn's previously filed comments.

Respectfully submitted,

THE BOARD OF TRUSTEES OF THE  
LELAND STANFORD JUNIOR UNIVERSITY

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October 23, 2003

## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 23rd day of October, 2003, caused to be served true and correct copies of the foregoing "Joint Reply Comments of Stanford University, Northeastern University and The Diocese of Brooklyn" upon the following persons via hand delivery:

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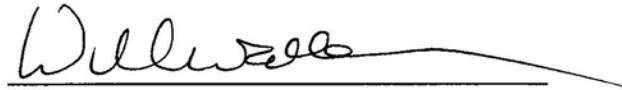
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A handwritten signature in black ink, appearing to read "William D. Wallace", written over a horizontal line.

William D. Wallace